IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST) NO.12204 OF 2007
IN
L.C.SUIT NO.1289 OF 2001

Jairam Baleshwar Mishra ...Appellant
Vs.
Brihanmumbai Municipal Corporation ...Respondents

Mr. Anil Singh with Mr. R.C. Kaushik, Advocates for Appellant
Mr. J.J. Xavier, Advocate for Respondents

CORAM: SMT.ROSHAN DALVI,J.
DATED: 18TH JUNE, 2007

P.C.

1. The Appellant has challenged the impugned judgment of the learned City Civil and Sessions Court dated 21st and 22nd March, 2007 in the Appellant's Suit No.1289 of 2001. This is an appeal from a judgment in a suit after recording evidence and considering the Appellant's documents.

2. The Appellant has produced a compilation of the entire oral and documentary evidence in the Suit. The Appeal can be disposed off at the stage of admission itself.

3. Heard both the Advocates.

4. The Appellant's case is to initially challenge the notice issued under Section 351 of the M.M.C. Act dated 8th December, 1998 and the order of the D.M.C passed thereon dated 27th January, 2001.

5. The notice is issued for an unauthorised shed constructed by brick masonary walls and wooden posts and A.C. Sheet roof as shown in the sketch admeasuring 7.3 mtrs x 3.6 mtrs.. The Shed is shown on one side of the structure called Jairam Mishra chawl. The Appellant/Plaintiff Jairam Mishra, resides in Jairam Mishra Chawl. He is admittedly the owner of the chawl as well as the suit structure. He is issued notice at the chawl as is apparent from the address in the notice.

6. He has replied the notice on that day itself, relying upon various documents.

7. Initially it was claimed that the reply was not received and hence, a notice under Section 488 of the M.M.C Act was issued. However, after another lis between the parties the Plaintiff's reply has been considered and the order challenged in the Suit came to be passed, considering the documents relied upon by the Appellant/Plaintiff. These

were the ration card, assessment bill, electricity bill, repair permission and slum notification. No other documents were relied in the reply. Hence, only these documents were considered in the order of the DMC of the MMC.

8. The Appellant/Plaintiff has replied upon the same documents and also further documents relating to the census on the suit structure. These have been considered by the learned trial Judge along side the oral evidence of the Appellant/Plaintiff and the evidence of the Respondents.

9. Both of them have examined one witness each. Both have been cross examined by the other party. The entire documentary evidence has been considered separately and in depth by the learned trial Judge. It will have to be seen whether he has correctly considered these documents, as the Plaintiff's case is essentially dependent upon the documents produced by him in respect of the structure challenged under the notice of the D M C.

10. Hence, the evidence of both the parties shall be required to be considered in detail.

11. The assessment bill under No.R-2953(SA) is for the period 1st April, 1971 to 30th September. 1971. It is for the

said shed. The evidence of the Respondents show that bill has been verified. It does not pertain to the suit structure. This document has also been considered by the D. M. C in his order. It must be appreciated that the Appellant/Plaintiff has another structure owned or co-owned by him which is adjacent to the suit structure. That is Jairam Chawl. The suit structure is shown by the side of Jairam Chawl. Hence, only the M.M.C can see which part of that structure came to be assessed in the aforesaid assessment number. Another structure constructed adjacent to the earlier structure must be taken as a separate structure as shown in the notice. Though, being adjacent can be referred to as Jairam Chawl. If the structure under the notice is not assessed under the original assessment bill, the statement of the Respondent that it does not pertain to the same structure would have to be accepted as is done by the learned trial Judge.

12. The same applies to the other documents produced by the Appellant. The compilation produced by the Appellant shows the ration card to be issued in the year 1955. It is stated to be issued by Thane Municipality. Judicial notice is required to be taken out of fact that no ration cards were issued either in Mumbai or Thane Municipal Limits prior to the Chinese Aggression in 1962. Hence, the ration card remains at that.

13. Though the Appellant/Plaintiff has not relied upon any census record in reply to the notice challenged by them so that it has not been considered by the D M C in his order, the Appellant has relied upon certain census record in the Suit. The learned Judge has considered such documentary evidence along side his oral evidence. The oral evidence shows that the area was declared a slum under a notification dated 31st August, 1977. The Appeal filed by the Appellant/Plaintiff against the said declaration came to be dismissed. The Appellant has been issued, what he calls, a census certificate. The date of its issue is not shown. The Appellant's Advocate stated to Court that it was issued in 2003. It is for the structure admeasuring 342 sq. ft. That is the structure stated to be in the slum. That is issued pursuant to an application made by the Appellant bearing No.1235231 for a hut. The Appellant claims that the census certificate is for the suit structure. The Appellant has not substantiated such claim. It cannot be seen that the Census Certificate is indeed issued to the Appellant. It cannot be related to the suit structure alone. The Appellant also owns or co-owns a larger structure adjacent to the suit structure which is called Jairam Mishra Chawl, which stands in his name. The Appellant has not shown any census of that structure in the same slum.

14. The Respondents have specifically deposed in their affidavit of examination-in-chief that the Appellant's structure was demolished on 20th April, 1996. On that aspect the Respondent's witness has not been cross examined.

15. The Appellant's claims protection of the structure as it stands in a slum. The Appellant must show that the structure existed prior to 1st January, 1995. That is not shown specifically in view of the uncontroverted statement that the Appellant's structure was demolished on 20th April, 1996. A census record, if any, therefore, cannot pertain to the structure which was found much later for which the impugned notice was to show 8th December, 1998.

16. The learned Judge has fully considered the evidence of both the parties and correctly concluded that the documents produced by the Appellant do not pertain to the suit structure. The Appellant has a larger structure by the side of the structure under notice which is Jairam Chawl. The Respondents contended in the suit itself that the documents do not pertain to the suit structure. Even the consideration of the documents by the DMC has resulted in the same conclusion. The Suit structure is by the side of the larger

chawl. In such a case the onus lies upon the Appellant to show separate documents for his own larger structure Jairam Mishra Chawl and specific separate documents for the suit structure adjacent to that chawl which is also known as Jairam Mishra Chawl. That having not being done the Appellant has not discharged the onus which lies on him to specifically prove his case by documentary evidence.

17. The Appellant's Advocate has argued that at different times the suit structure is stated to be at Jairam Chawl, behind Jairam Chawl, as an addition to Jairam Chawl or as an extension to Jairam Chawl and hence, the description given by the Respondent is incorrect and liable for rejection. The prepositions do not matter. The structure under the notice is adjacent to the chawl. It is constructed as a separate structure having one same wall. The Appellant is Jairam Mishra. The larger structure is admittedly Jairam Mishra Chawl. The Appellant claims to be the owner of the structure under the notice also. It is adjacent to his earlier structure. The description is, therefore, neither ambiguous nor misleading nor also a different description.

18. The learned Judge has correctly considered the entire evidence. The suit is rightly dismissed.

19. The Appeal itself is heard at the stage of the admission and is dismissed under the provisions of Order 41 Rule 11 (1) of the C.P.C.

20. The interim order passed in this Appeal which continues till today shall continue for a further period of 6 weeks.

(SMT. ROSHAN DALVI, J.)